

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of BILLINGSLEY, Minors.

UNPUBLISHED

March 13, 2014

No. 318248

Wayne Circuit Court

Family Division

LC No. 13-512931-NA

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Before: DONOFRIO, P.J., and SAAD and METER, JJ.

PER CURIAM.

Respondent appeals as of right from a circuit court order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(i) (physical abuse to child or sibling), (g) (failure to provide proper care or custody), (j) (reasonable likelihood of harm if child returns to parent's home), and (k)(ii) (criminal sexual conduct involving penetration). Because the trial court did not clearly err in determining that a statutory ground existed for terminating respondent's parental rights to his minor children and because the trial court did not clearly err in determining that termination was in the children's best interests, we affirm.

Petitioner sought termination of respondent's parental rights to the four children based on respondent's sexual abuse of his daughter. Respondent pleaded no contest to the allegations in the petition for purposes of both jurisdiction and the alleged statutory bases for termination. Following a dispositional hearing, the trial court found that termination of respondent's parental rights was in the children's best interests.

Respondent first argues that the trial court erred in terminating his parental rights to the children who were not the subject of the sexual abuse. We review a trial court's factual findings, including its determination that a statutory ground for termination of parental rights has been proven by clear and convincing evidence, for clear error. *In re Hudson*, 294 Mich App 261, 264; 817 NW2d 115 (2011). A finding is clearly erroneous if this Court is left with a definite and firm conviction that a mistake was made. *Id.*

A trial court may terminate a respondent's parental rights if it finds that (1) a statutory ground under MCL 712A.19b(3) has been established by clear and convincing evidence and (2) that termination is in the children's best interests. *In re CR*, 250 Mich App 185, 194-195; 646 NW2d 506 (2001).

The evidence offered at the plea proceeding showed that respondent engaged in sexual activity with his 13-year-old daughter that included an act of digital penetration, MCL

750.520a(r). First-degree criminal sexual conduct involving penetration occurs when the victim is between the ages of 13 and 15 and both the victim and the perpetrator are members of the same household or are related by blood or affinity to the fourth degree. MCR 750.520b(1)(b)(i) and (ii). Respondent claims that this evidence only goes to his unsuitability to parent the victim daughter, and not her other siblings. However, respondent fails to appreciate MCL 712A.19b(3)(k)(ii), which provides that a person's parental rights can be terminated if the parent sexually abused "a child *or a sibling of the child*." (Emphasis added.) Thus, because the evidence at the plea proceeding clearly established that respondent engaged in criminal sexual conduct involving penetration with one of his minor children, the trial court did not clearly err in finding that there was a sufficient statutory basis for terminating respondent's parental rights to all of the children. Further, because only one statutory ground for termination need be established, we need not address whether the other statutory grounds were properly established. *In re Foster*, 285 Mich App 630, 633; 776 NW2d 415 (2009).

Defendant also argues that the trial court erred in determining that termination of his parental rights was in the best interests of the children. We review the trial court's best interest determination for clear error. *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012).

We first note that respondent mischaracterizes the burden of proof associated with a trial court's best interest findings. Whether termination is in a child's best interests is to be determined by a preponderance of the evidence standard, not the same clear and convincing standard that is used to determine whether a statutory ground for termination has been satisfied. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013).

Second, the trial court properly addressed each child's interests, *In re Olive/Metts*, 297 Mich App at 42, by taking into account the different types of harm to which they were subjected and by considering each child's preferences. Here, the evidence showed that respondent sexually abused his own minor daughter, and that his conduct adversely affected all family members. Respondent's daughter, who was the victim of the criminal sexual assault, attempted suicide more than once. The other children were also emotionally traumatized by the effect of respondent's conduct. Respondent's daughter did not want to see respondent, and her three siblings expressed either an indifference toward or a similar desire not to see respondent. Evidence that respondent had financially supported his children and had appeared to outsiders to be a concerned and caring father did not outweigh the enormity of the harm to the children caused by respondent's selfish actions. As a result, we are not left with a definite and firm conviction that the trial court erred in determining that termination of respondent's parental rights was in the children's best interests. *In re Hudson*, 294 Mich App at 268-269; *In re Jenks*, 281 Mich App 514, 519; 760 NW2d 297 (2008). Respondent claims that the trial court's finding is somehow flawed because it did not have an expert report regarding respondent's psychological evaluation. However, there is no requirement that the court have such an evaluation in making

its best interest determinations. But cf. MCR 3.977(G)(2) (requiring expert testimony that parental rights should be terminated in cases involving Native American children).

Affirmed.

/s/ Pat M. Donofrio  
/s/ Henry William Saad  
/s/ Patrick M. Meter